

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**TERESA R. ROBERTS,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 2:04cv 61  
(Maxwell)**

**JO ANNE B. BARNHART,  
COMMISSIONER, SOCIAL  
SECURITY ADMINISTRATION,**

**Defendant.**

**ORDER**

On January 23, 2006, the Court referred the pending Defendant's Motion for Summary Judgment and Plaintiff's Motion for Judgment on the Pleadings to United States Magistrate Judge John S. Kaull, pursuant to 28 U.S.C. § 636(b)(1)(B), Rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 4.01(d), with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition. However, on May 11, 2006, Plaintiff filed a Motion to Remand for New and Material Evidence. On June 16, 2006, Defendant filed her Response to Plaintiff's Motion to Remand, which response also requested a remand of this action under the fourth sentence of 42 U.S.C. §405(g). On June 20, 2006, Magistrate Judge Kaull filed his Report and Recommendation wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections have been filed.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised in the Motion to Remand and Response were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the proposed Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Plaintiff's Motion to Remand for New and Material Evidence shall be, and the same hereby is, **GRANTED**. It is further

**ORDERED** that this matter is **REVERSED AND REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. §405(g) solely for a computation and award of benefits. It is further

**ORDERED** that this action shall be, and the same hereby is, **DISMISSED** from the docket of this Court.

Counsel for the Plaintiff is advised that an application for attorney's fees under the Equal Access to Justice Act (EAJA), if one is to be submitted, must be filed within 90 days from the date of the judgment order.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

**ENTER:** July 20<sup>th</sup>, 2006

/s/ Robert E. Maxwell  
United States District Judge